

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SANDRA DRAKE and RANDY SMITH,)
on behalf of themselves and others similarly)
situated,)

Plaintiffs,)

vs.)

Case No. 4:14-CV-1535-JAR

STEAK N SHAKE OPERATIONS, INC.,)

Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on Defendant Steak N Shake Operations, Inc.’s Motion to Strike Supplemental Authority Notice of Plaintiffs (Doc. 17). Defendant asserts that Plaintiffs’ Supplemental Authority (Doc. 14) should be stricken both because the authority is immaterial and because Plaintiffs failed to request leave to file their notice of supplemental authority. In response, Plaintiffs Sandra Drake and Randy Smith filed a Motion for Leave to Submit Previously Filed Notice of Supplemental Authority by Plaintiffs (Doc. 20). Plaintiffs argue that while a Motion for Leave to Supplement is unnecessary in this instance, “rather than file an opposition brief and continue fighting over whether or not leave should have first been sought,” Plaintiffs file the instant belated motion (Doc. 20 at 2).

The Court will grant Plaintiffs’ request. This Court’s Local Rule 7–4.01(C) states that after a memorandum in opposition to a motion and a reply memorandum have been filed, “additional memoranda may be filed by either party only with leave of Court.” E.D.Mo. L.R. 7–4.01(C). However, Plaintiffs’ Notice of Supplemental Authority does not constitute such an additional memorandum. *Cf. Asarco LLC v. NL Industries, Inc.*, No. 4:11-CV-00864-JAR, 2012

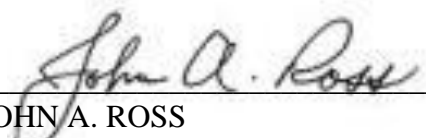
WL 6726381 (E.D. Mo. Dec. 27, 2012) (finding a motion for leave should have been filed when Plaintiff's Memorandum of Supplemental Authority did not simply provide notice of supplemental authority but also requested the Court consider attached orders as supplemental authority against specific arguments made by Defendants).

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to Submit Previously Filed Notice of Supplemental Authority by Plaintiffs (Doc. 20) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant's Motion to Strike Supplemental Authority Notice of Plaintiffs (Doc. 17) is **DENIED as moot**.

Dated this 26th day of November, 2014.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE